

TREE PROTECTION ORDINANCE

PHASE 1 UPDATES | SUMMARY OF PROPOSED CHANGES

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After a rewrite of the City's Tree Protection Ordinance that was introduced in 2021 failed to gain support, the Department of City Planning decided to take an incremental approach to updating the ordinance. The first phase of updates seeks approval of less controversial, but still important, changes. Success in this phase will set the stage for future revisions.

Beginning in the spring of 2022, a broad working group of stakeholders representing several environmental and tree canopy advocacy groups, development trade groups, the Atlanta Tree Conservation Commission, City Council, and the Mayor's office convened for a series of intensive work sessions with the goal of identifying and finding agreement on some of the less controversial changes that are needed in the ordinance. Out of that process came this collection of changes that received broad support from the working group.

ORDINANCE ADMINISTRATION

► **New site inspection fee | Section 158-101(e)(5)**

Under the current ordinance, there is no charge for a site re-inspection by the City Arborist, even when the re-inspection is necessary due to an error on the applicant's part. Under this new provision, a \$50 re-inspection fee will be charged if, due to applicant errors, more than two field inspections are required to post the notice of preliminary plan approval.

► **New language clarifying the arborists' ability to deny unnecessary tree removals | Section 158-102(a)(1)**

The current ordinance provides conflicting guidelines for the preservation of trees within the buildable area of a lot during construction. The ordinance states that applicants for tree removal permits "shall, to the maximum extent feasible, minimize the impact on the trees on the site" (Section 158-103(a)). However, elsewhere in the current ordinance, the criteria for issuing a tree removal permit only require that the tree be "located within the buildable area of the lot" with no other language regarding preservation within the buildable area (Section 158-102(a)). The lack of clarity on how to balance the policy of "minimize[ing] the impact on the trees on site" against the criteria that seems to allow removal of all trees in the buildable area has limited the City Arborist's ability to deny tree removals that are unnecessary for development. This has, in turn, resulted in unnecessary tree loss in Atlanta.

The new proposed language helps to clarify the relationship between the two standards by defining reasonable and flexible site design criteria and construction methods to allow development while ensuring greater tree preservation.

► **New language to allow arborists to make minor variations to ordinance standards (e.g. tree species or spacing) | Section 158-34**

The current ordinance gives the City Arborist little authority to make even small modifications to the requirements of the ordinance. This provision would allow the City Arborist to make small, reasonable modifications to the requirements of the ordinance in response to unusual site conditions, project type, or other project specific issues. Any modifications to the ordinance standards granted by the City Arborist would be documented in the project record and accessible to the public.



► **Potential tree impacts to be considered before selecting a site for new City facilities | Section 158-36**

The current ordinance contains no guidance on choosing sites for City facilities with the goal of reducing tree impacts. This new language will require the City of Atlanta Department of Enterprise Asset Management to consult with the City Arborist during site selection for new City facilities to ensure that minimizing tree impacts is a consideration when selecting the most appropriate site.

► **Tree posting durations lengthened | Section 158-65 (a)(2)**

In response to many requests from the public to extend the duration of the posting for private property trees, the posting periods for trees on private property are proposed to be increased as follows:

- 1st posting will be increased from **10 calendar days to 10 business days**.
- 2nd posting will be increased from **5 business days to 7 business days**.
- Both postings will continue to be **physical signs** posted on the site.

TREE PROTECTION AND ENFORCEMENT

► **Tree protection fencing required to be chain link or other 'hard' material in certain circumstances | Section 158-65(c)**

The current ordinance requires the installation of tree protection fencing during construction. Typical tree fencing is made of 4-foot-high orange plastic mesh. This type of fencing is easy to knock over inadvertently on a construction site.

The new language defines where the use of chain link, wood, or other more substantial fencing material will be required to help ensure that the fencing stays in place. This will apply in situations where construction activity is more intense, such as on commercial projects or in front yards of residences, but also around trees that are deemed to need special protection, such as those that are approved to have more than 20% of their root zone impacted.

► **Tiered fine system for construction site violations | Section 158-35(d)**

The current TPO is unclear as to whether the City Arborist may issue citations for violations of tree protection measures during construction where a tree was not injured or destroyed. This new language will allow the arborist to cite builders or others who, for example, fail to reinstall tree-save fence if it is knocked over.

No changes are proposed to the penalties for illegally injuring or destroying a tree, which are defined in section 158-35(a) of the existing code.

► **Invasive vine removal from preserved trees will be required for minimum tree cover credit | Section 158-103(h)**

This new provision will address the threat that certain invasive vines pose to the City's tree canopy. Several species of invasive vines that can smother or strangle trees have taken up residence in Atlanta's forests. Left to grow on trees unchecked, vines like English Ivy, Chinese Wisteria, and Kudzu can eventually smother and kill the trees they grow on. This provision requires that any trees that are to be counted towards meeting the minimum tree cover requirement in Section 158-103(g) must have any invasive vines removed from the tree to ensure the tree's continued health.

TREE PLANTING

► Update minimum tree planting spacings | Section 158-103(a)(1)

The City Arborist has determined that the minimum spacings between newly planted trees, as defined in the current ordinance, are larger than necessary. This update reduces the minimum spacing for newly planted overstory and mid-canopy trees to allow for denser tree plantings and quicker canopy cover on newly planted sites.

Minimum spacing for overstory trees: Reduced from 35 feet (current ordinance) to 25 feet when planted in a single row, or 30 feet when planted en masse.

Minimum spacing for mid-canopy trees: Reduced from 25 feet (current ordinance) to 20 feet.

► Defined ratio of different species required for site plantings | Section 158-103(i)(2)

The current ordinance does not require a diversity of tree species when new trees must be planted. However, species diversity creates resilience in the urban forest and reduces the impacts of disease and pests. Additionally, the use of species native to this region helps support local ecosystems.

This new language proposes planting standards that will ensure a diversity of species, with an emphasis on the use of native species, in future tree plantings.

► Updated parking lot planting requirements | Section 158-30

Paved surfaces like roads and parking lots absorb more heat from the sun than vegetated surfaces and radiate that heat back out, raising the temperature of surrounding areas. High urban temperatures can exacerbate air quality issues and cause heat related health problems, especially within vulnerable populations.

Several aspects of the current ordinance's parking lot planting standards need to be updated to ensure better tree canopy coverage to lower the temperature of surface parking lots.

The proposed update does not change the number of trees required (1 tree per 8 parking spaces) but lowers the size of parking lot that the requirements apply to (from 30 spaces in the current ordinance to 16 spaces in the update), requires a more even distribution of trees across the parking lot, requires the use of overstory and mid-canopy species, and requires the use of larger planting areas (as described below) to insure healthier and longer-lived plantings.

► Minimum soil areas for tree plantings | Section 158-103(j)

Trees need an adequate amount of rich, uncompacted soil to grow to their full potential. The current tree ordinance's requirement for a six-foot by six-foot planting area for trees in parking lots is inadequate and in most cases results in trees that grow smaller and die younger than they should.

This update defines the minimum soil area required for planting trees when surrounded by paving or planted in other constrained areas. These requirements apply not just to parking lots, but all constrained planting areas. The proposed planting areas are listed below.

Overstory trees: 400 square feet of soil per tree

Mid-canopy trees: 250 square feet of soil per tree

Understory trees: 100 square feet of soil per tree

► **Updated list of undesirable and invasive tree species and policy for their removal | Section 158-101(2)**

The current ordinance identifies a limited number of tree species that, due to their undesirable qualities, may be removed without required replanting or payment of recompense (Section 158-102(b)). Additionally, these trees may not be planted for replacement or recompense credit (Section 158-103(a)(2)).

This update proposes an expanded list of undesirable tree species that is divided into two categories: Invasive species and undesirable species. The species designated as invasive pose a risk to our local ecosystems due to their ability to spread aggressively and outcompete native species. The remaining species on the list are undesirable due to issues such as disease susceptibility, being weak-wooded and prone to breaking, or simply add little to the quality of Atlanta's urban forest.

Under this update, removal both types of trees require a permit from the arborist but are exempt from posting and appeals. Any number of invasive trees may be removed with no replacement or recompense required, while removing 5 or more undesirable trees will require either replacement of those trees or proof that the site meets the existing tree cover (afforestation) requirement in Section 158-103(g).

No species on the list of undesirable and invasive species may be planted for replacement or recompense credit. The list of the invasive and undesirable species is not included in the text of the ordinance and will be maintained and updated by the City Arborist. The updated list is attached to the end of this document and will be available from the Arborist Division in the future.

► **Street trees required on all sites | Section 158-103(k)(1)-(2)**

Along with parking lots, streets are one of the primary contributors to the urban heat island. The shade and evaporative cooling from trees can greatly reduce the heat that streets absorb. The current tree protection ordinance does not have specific a requirement for trees to be planted along streets in new developments. Many zoning categories in Atlanta do require street trees, but not all.

This update requires street trees on all construction projects along public and private roads at 40 foot spacings or as required by zoning code. Street trees must be a mix of overstory and mid-canopy trees.

► **Tree planting options during development of single-family residential subdivisions | Section 150-103(k)(3)**

The current ordinance has minimum tree cover requirements that apply to all projects but does not address when to plant these trees during the complicated, multi-phase development of residential subdivisions.

This update defines two options for when tree planting along streets and on other common property in new single-family residential subdivisions should take place, and for enforcement purposes, requires that the common property tree plantings be recorded on the final subdivision plat.

► **Trees on commercial, multi-family, and mixed-use developments must be replaced for the life of the development | Section 158-10**

With the exception of trees in parking lots, under the current ordinance new trees planted as a requirement of the tree protection ordinance are only required to live for two years after planting. In most cases, the two-year window ensures that the trees got established and will grow for decades.

However, commercial, multi-family residential, and mixed-use developments often have lower levels of tree canopy than less intensively developed sites, have site conditions that are often more stressful for trees, and are less likely to have natural regeneration of trees (volunteers) on site. Maintenance and replacement of the trees providing shade and other benefits to these developments is vital to ensure adequate tree canopy. To this end, this new provision requires that for the life of a development, all trees planted as a permit requirement on commercial, multi-family residential, or mixed-use developments that are dead or dying must be replaced with another tree.

TREE TRUST FUND

► Allow the use of Tree Trust Funds for the pruning, removal, and replacement of hazardous trees for low-income homeowners | Section 158-66(c)

This new provision allows the use of Tree Trust Funds to address a need not originally anticipated. Many low-income homeowners in Atlanta struggle to pay for maintenance or removal of hazardous tree on their property. This can lead to a wariness of trees growing on their property and potentially less support for a dense city-wide tree canopy.

This provision allowed the use of up to \$200,000 per year from the Tree Trust Fund to assist low-income homeowners prune or remove hazardous trees growing on their property. When a tree is removed under this new program, a new tree will be planted on the property.

The Department of City Planning will establish eligibility standards based on income for this program after adoption.

► Added account numbers and ranges for Tree Trust Fund revenues and expenses and clarified departmental management authority | Section 158-66(b)

This new language, recommended by a 2020 audit of the Tree Trust Fund, adds revenue and expense account numbers and ranges to the ordinance and clarifies that the Department of City Planning is responsible for the management of the Tree Trust Fund.

DEFINITIONS

► Section 158-26

- Updated the definition of **overstory tree** to reflect current species categorization.
- Added definitions for new terms used in the ordinance:
 - **arborist division**
 - **soil cell**
 - **business day**
 - **streetscape**
 - **root chase**
 - **suspended pavement**

LIST OF UNDESIRABLE AND INVASIVE SPECIES

Undesirable Tree Species (Non-Invasive)	
Common Name	Botanical Name
Chinese elm	<i>Ulmus chinensis</i>
Cherry, flowering ornamental	<i>Prunus okame/Kanzan/x yedoensis</i>
Cryptomeria, Japanese Cedar	<i>Cryptomeria japonica</i>
Ginkgo, female (fruiting)	<i>Ginkgo biloba</i>
Japanese maple	<i>Acer palmatum, japonicum</i>
Kousa Dogwood	<i>Cornus kousa</i>
Leyland cypress	<i>Cupresses x leylandii</i>
Photinia, Red Tip	<i>Photinia x fraserii</i>
Popular, Lombardy	<i>Populus nigra</i>

Invasive Tree Species	
Common Name	Botanical Name
Ailanthus, Tree of Heaven	<i>Ailanthus altissima</i>
Callery Pear (Bradford)	<i>Pyrus calleryana</i>
Cherry Laurel	<i>Prunus laurocerasus</i>
Chinaberry	<i>Melia azedarach</i>
Chinese Holly	<i>Ilex cornuta and hybrids</i>
Chinese Parasol Tree	<i>Firmiana simplex</i>
Golden Raintree	<i>Koelreuteria paniculata</i>
Ligustrum species	<i>Ligustrum spp.</i>
Mimosa	<i>Albizia julibrissin</i>
Pagoda Tree	<i>Styphnolobium japonica</i>
Paper Mulberry	<i>Broussonetia papyrifera</i>
Princess Tree	<i>Paulownia tomentosa</i>
Sawtooth Oak	<i>Quercus acutissima</i>
Tallow Tree	<i>Triadica sebifera</i>
White Mulberry	<i>Morus alba</i>

Invasive Vines	
Common Name	Botanical Name
Chinese and Japanese Wisteria	<i>Wisteria floribunda and sinensis</i>
Chocolate Vine	<i>Akebia quinata</i>
English Ivy	<i>Hedera helix</i>
Kudzu	<i>Pueraria lobata</i>
Porcelain berry	<i>Ampelopsis glandulosa var. brevipedunculata</i>
Winter Creeper	<i>Euonymus fortunei</i>